

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSHUA ANDREW RODRIGUEZ,

Plaintiff,

v.

WILLIAM PAULAKIS, et al.,

Defendants.

NO: CV-11-257-CI

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING FIRST AMENDED
COMPLAINT

1915(g)

Magistrate Judge Imbrogno filed a Report and Recommendation on November 16, 2011, recommending Mr. Rodriguez's First Amended Complaint be dismissed because claims of medical malpractice and negligence will not support a cause of action under the Eighth Amendment. *Broughton v. Cutter Lab*, 622 F.2d 458, 460 (9th Cir. 1980). Furthermore, Plaintiff's claims arose in November 2007, and were, therefore, barred by the three year statute of limitations. RCW 4.16.080(2); *Rose v. Rinaldi*, 654 F.2d 546, 547 (9th Cir. 1981); *Wilson v. Garcia*, 471 U.S. 261 (1985). There being no objections, the court **ADOPTS** the Report and Recommendation. The First Amended Complaint is **DISMISSED WITH** ORDER ADOPTING REPORT AND RECOMMENDATION . . . 1

1 **PREJUDICE** for failure to state a claim upon which relief may be granted. 28
2 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

3 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
4 brings three or more civil actions or appeals which are dismissed as frivolous or for
5 failure to state a claim will be precluded from bringing any other civil action or
6 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious
7 physical injury.” 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory**
8 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's complaint may**
9 **count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may**
10 **adversely affect his ability to file future claims.**

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
12 Order, enter judgment, forward copies to Plaintiff at his last known address, and
13 close the file. The District Court Executive is further directed to forward a copy of
14 this Order to the Office of the Attorney General of Washington, Criminal Justice
15 Division. The Court certifies any appeal of this dismissal would not be taken in
16 good faith.

17 **DATED** this 6th day of December 2011.

18
19 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
Chief United States District Court Judge